STATE PROPERTY – STATE ENTERPRISE

GY. EÖRSI
Department of Civil Law, University Eötvös Loránd, Budapest
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I.

Theoretical foundations

1. "Whatever the social form of production, labourers and means of production always remain factors of it. But in a state of separation from each other either of these factors can be such only potentially. For production to go on at all they must unite. The specific manner in which this union is accomplished distinguishes the different economic epochs of the structure of society from one another".[1] Thus the crucial problem is the association of the workers and the means of production, i. e. "It is always the direct relationship of the owners of the conditions of production to the direct producers – a relation always naturally corresponding to a definite stage in the development of the methods of labour and thereby its social productivity – which reveals the innermost secret, the hidden basis of the entire social structure..."[2]

If the relation between state property and state enterprise is made subject of a theoretical study, if the essence, the principal function of a state enterprise is explored, we have to set out from the combination of workers and the means of production, of work and property in the present phase of building socialism in Hungary. From this aspect a state enterprise is nothing else but an organization having as its purpose *the peculiar combination of state socialist ownership and labour*[3]. In general the peculiarity of this combination has its origin in state ownership, specifically under the conditions of the present phase of building socialism, and particularly in the" innumerable different emprical circumstances, natural environment... external historical influences, etc...."[4] which actually prevail in Hungary, i.e. the peculiarities of building socialism in Hungary, the system of economic management introduced on January 1, 1968, first of all.

2. "Hätte die Revolution von 1789 stattgefunden ohne die heillose Isolierung der französischen Bürger vom Gemeinwesen? ...Dies Gemeinwesen, von welchem ihn seine eigene Arbeit trennt, ist das Leben selbst, das physische und geistige Leben, die menschliche Sittlichkeit, die menschliche Tätigkeit, der menschliche Genuss, das menschliche Wesen. Das menschliche Wesen ist das wahre Gemeinwesen der Menschen".[5] "Würden z.B. bei der Entwicklung von Familie, bürgerlicher Gesellschaft, Staat etc. diese sozialen Existenzialwesen

des Menschen als Verwirklichung, Verobjektivierung seines Wesens betrachtet, so erscheinen Familie etc. als einem Subjekt inhärenter Qualitäten. Der Mensch bleibt immer das Wesen aller dieser Wesen, aber diese Wesen erscheinen auch als seine wirkliche Allgemenheit, daher auch als Gemeinsame".[6]

Our second point of departure is this "true community." (Gemeinwesen.) Following from the immanent social nature of man this community is always present notwithstanding its historical metamorphoses – in capitalism it is embodied by commodity relations – yet prior to communism it was only a "caricature" of true and real human community.[7] The struggle for the completion of this community coincides with the struggle for communism. In the course of this struggle, Hungary has already taken the decisive step, i.e. the socialisation of the means of production and the liquidation of class antagonism. By this the basic conditions of the mentioned completion have been brought about, and the gate has been opened to a period of transition, which will turn up the pages of "the true history of mankind." Thus the basic conditions have been created for the worker not being separated by his own work from the "true community", although we are still at the beginning of this path: the fundamental *possibility* has been created for a development towards communism and the *realisation* of this possibility is the task and responsibility of society. In order to achieve this, the development of productive forces must transform work by freeing it from its often mechanical and physically excruciating, often mentally blunting character, which timits the capacity to comprehend the social-economic processes and social consciousness has to be transformed by a highly developed social-productive practice.

The struggle for the "true community" has a fundamental significance. An abandonment of this element either by seeing society only as a sum of individuals, or by associating decisive production, or even barter, with property directly, eliminating the social element, would emasculate this analysis and deprive it from its human-social element. In the first case, the dialectic of the "specific essence" (Gattungswesen) of man as individual and as social being would be ignored, in the second, economism would haunt us in a peculiar form. *State socialist ownership*, together with other forms of social ownership, is the *basic condition* – but only the *basic* condition – *for the completion of a "true community"* in the present phase of evolution.

3. Naturally there are many methods applied in conjunction for the achievement of a "true community", i. e. for developing the free community of communism. Among these, one by no means insignificant method is the development of group communities for serving as a link between the individual and society. Although society as a whole is always present in the intercourse of individuals in one form or another, it is the group that can unite in a concentrated form the social and individual elements. In the group the features of each individual still stand out distinctly, but society as a whole already becomes visible more clearly. Through the agency of group interests, the group may embrace the individual interests of its members, and social interest at the same time. Not as if individuals could not carry social interest, but in the present phase of our evolution social interest may often appear to the individual in a rather abstract, distant, often unknown form. And in the present state of social consciousness, intense, dominant energies for a consistent and absolute service of social interest frequently fail to develop in the individual. However,

partly the members of the group may be thoroughly familiar with group interests, partly intensive, individually charged impulses may be generated for the service of group interest at a time when group interest and group efforts may become aligned for the service of social interests more conveniently than the often divergent interests and efforts of millions of atomized individuals.[8] Hence the group is the concentrated link between individual and all-social functions. Therefore this function qualifies the group for becoming the architect of the "true community". In fact an essential path to the development of true all-social collectives is the building up and development of group collectives. That in the present phase of our development this takes place in a certain sense in a roundabout way, is another matter (section 35).

All that has been set forth so far is of vital importance for the present subject-matter merely because under modern conditions of production society displays productive activities overwhelmingly within the framework of group-forming units. As a matter of fact modern productive forces insist on operative frameworks where groups differentiated by division of labour are active. Whether or not, as for their content, these groups constitute a pile or a community, what sort of a community as for that matter, depends on a number of factors. In the enforcement of the economic reform now in progress in Hungary, a tendency pointing far beyond the sphere of economic management is to fill groups and group interests with a community content, and to reinforce their cohesion.[9] This tendency is being realized by means which many do not consider as socialistic: i. e. by encouraging financial interestedness which serves group interests, manifesting themselves in profit, and serves in this way also social interests. Here we shall not discuss the obvious risks of this tendency; all we should like to point out is that the development of a group community for the achievement of a "true community" is served by means established in societies of the past, also incorporating disruptive trends, which means may, however, be freed from these trends, and may have a chance of acting to a varying degree until communism has been built up. This does not, however, take place in the spirit of the catchword "the end justifies the means", but in agreement with the present stage of material and mental development of society. An objection may be raised only by those who would like to force their way to communism without men, on an abstract pattern, by ignoring the state of production and consciousness at any time.

Hence, with the nationalization of the means of production, the basic condition for the achievement of a "true community" has been created. An important stage of the path still before us is the reform of economic management, which by way of a large-scale development of group interestedness advances at great strides towards the formation of group interestedness uniting the social and individual elements in a concentrated form. *The state enterprise is the most important organizational framework and stage of the formation of the group community alloying the social and individual elements.*

4. The potentialities of the formation of a group community exist only amidst the conditions of social ownership. Although, as has already been pointed out, the phenomenon of a "true community" is in one form or another present in the evolution of society as a whole, in fact man is always a social being, but under bourgeois conditions "true community" manifests itself in a form transmitted by the commodity relations and consequently in an enfeebled form.

Under bourgeois conditions the merger of ownership and work takes place through a mass of atomized exchanges of commodities among the members of antagonistically opposed classes. Bourgeois owners of enterprises assign the group of producers by way of commodity contracts to their means of production and by this bring about the class antagonism within the factory: the union of the owners of the factory and the element performing the work at the same time brings to light their disruption. E. g. in a company limited by shares there is a "dual collective", viz. the owner group of the shareholders, to which the executives of the enterprise having decision-making competences are attached, and the group of manual and white collar workers of the lower ranks. However, this "dual collective" differs from *Venediktov*'s dual collective section 7) in so far as between the former collectives there is the ditch of class antagonism.[10] This, however, bears testimony to the fact that under the conditions of modern large-scale industry at a higher stage of generalization the notion of Venediktov's dual collective has a significance transcending beyond the socialist enterprises. This notion may serve as a starting point e. g. in disputes with opinions emphasizing the element of private ownership has disappeared from the background of the modern bourgeois enterprise, power being vested in the employed manager. In a modern bourgeois enterprise, too, a combination of ownership and work takes place. In contrast to the socialist solution, the specific traits are the class antagonism of the two; in contrast to earlier societies, the commodity nature of the combination; and in contrast to an earlier phase of capitalism, a moderate change in the actual functions of the owner, without a diminution of his power (section 10 and 27).

II

The combination of ownership and work in the European socialist countries

5. In the history of European socialist evolution, the combination of social ownership and the group collective of producers has taken place on the following patterns.

a) The overwhelming role of state socialist ownership in a system which unites the state sector as a whole in a uniform organization of super- and subordination, where the elements of administrative law are predominant, group-forming and individual interests have no appreciable significance; enterprises in either the economic or legal sense need hardly be considered here, and civil law solutions have a wholly subordinate role. This was the system of „war communism."

b) The other extreme is the complete denial of state socialist ownership, the wholesale identification of ownership and group in the national economy as a whole (and not only in the co-operative sector). Here the all-social element finds no direct expression of ownership; group-ownership is the sole intermediary between social property and labour: the owner is the producing collective. Consequently the state administers the property of groups alien to it, and not its own property. This is the Yugoslav system.

c) The third pattern resorts to the intermediation of both the state-and the group-ownership. The producing groups are in the first place united with the means of production in state ownership in a way that within the framework of the state enterprise the relative independence of the group is established with lesser or greater intensity without ownership. This is complemented by the intermediation of group (cooperative) ownership. This method became established with different centres of gravity and in different proportions in the earlier and new systems of economic management in the socialist countries of Europe, and so also in the Soviet Union following war communism, i. e. primarily in the last years of the twenties, as well as in Yugoslavia in the beginning.

6. There is not much left to be said of the model of war communism. It was born amidst wholly specific, unfavourable conditions. An originally weak country ravaged by war, with a starving population, carrying on a struggle for life with the armies of imperialism and the domestic foe, with an industry of a low potential, and therefore easier to centralize, a small number of trustworthy professionals and experts, who therefore had to be employed preferably at headquarters, these were the basic factors which helped to shape war communism. It was a makeshift in the strictest sense of the word.

The Yugoslav pattern owes its birth to the horror from the bureaucratic traits of the state sector. It was not believed that these traits could be cropped to a minimum and therefore the bureaucratism of the state sector was jettisoned together with the state sector, i. e. state ownership was abolished. Without going into details here, it is submitted that the abolition of state ownership, the exclusiveness of social group property preserves one of the characteristics of bourgeois private property, at least in its tendencies, viz. the risk of anarchy without, however, a risk of exploitation. Here group interests can be integrated into social interests with difficulties only. Notwithstanding the stage of development transcending the group limits of the productive forces, the full exploitation of these forces, their proportionate development have become problematic. Here the intensity of the all-social element is wanting, and there is a risk that the group interests integrating the individual interests are integrated with the all-social interest insufficiently and with difficulty. At the present stage of production and consciousness, risks of this type appear to be implied in the seemingly most highly developed pattern of a socialist solution, where the ownership of the means of production is given directly to the producing collective, thus abolishing the segregation and union of ownership and work.

The pattern "state enterprise", is distinguished fromthat of war communism by the term "*enterprise*", and from the Yugoslav pattern by the epithet "*state*". This, on the one hand, does not consider the state sector a single huge organization, and, on the other, does not break down social property to purely group properties. Therefore here a risk of either bureaucracy, or, at the other extreme, of anarchic tendencies is undoubtedly implied. This follows from the circumstance that this pattern unites the two extremes; the one mitigates the risks of the other, yet never removes them once for all. Still on the other hand this pattern also incorporates all the advantages of the two extremes, viz. the right of disposal over the totality of the productive forces as well as the exploitation of individual and group interestedness, when the one reinforces the other, are equally possible in this pattern. In the earlier system of economic management, the former was more in prominence; whereas in the new sys-

tem the risk implied in the latter is more imminent. In the present phase of evolution in Hungary, this pattern appears to be relatively the most suitable: it merges the property of society as a whole represented by the state with the producing group endowed with more or less independence. This system, at least in principle, guarantees the best possible reconciliation of all-social and individual interests through the link of the group.

The following discussion will move within the framework of this latter pattern.

III

The foundations of the Hungarian system

7. On the basis of what has been set forth so far, the thesis chosen as starting point can be expanded in a sense that *the state enterprise may be considered the organizational framework of the coupling of state socialist owhership and the producing group*. It is undoubtedly the merit of *A. V. Venediktov* that he had exposed his theory of a dual collective[11], giving good expression to this basic structure, at a time when what this theory implied was a potentiality rather than a reality. This theory served as a guidance of legal policy and jurisprudence[12] for a long time, even when some of the statements going into detail cannot anymore stand the test. As a matter of fact the duality of the all-social collective and of the enterprisal collective exactly represents the coupling of state socialist ownership and the producing group. It would be a mistake to interpret this coupling of the two as if the owner were outside the enterprise, whereas the collective is inside it. The owner and the working elements are separated relatively within the enterprise proper. The collective of the latter is building up, and becoming institutional by degrees. Within the enterprise, interestedness and jurisdiction of the owner and the producing collective are separated, and in the wake of the economic reform, substantial changes take place in the proportions, which in turn have entailed an increase of the interest of the workers as members of the collective.

8. Hence the owner element is present both within the enterprise and outside it. Outside the enterprise it is embodied by the economic guiding agencies, and within it by the manager appointed by these agencies. The reform of economic management has introduced considerable changes in the relations between *external* and *internal* proprietary guidance and management. The nature of external proprietary management has changed, and consequently internal proprietary management has become more a reality than before. As is known this change has been effected in a way that the system of direct instructions has been superseded by a system of *indirect economic regulators* constituting part of the economic plan. This change of system has placed the enterprises in an economic environment where their legally free decisions made in response to the impulses of a state-controlled market in general conform to all-social interests. In order that the *stimuli* directed to making decisions of this type in fact provoke a vigorous response in general, and should be reflecting all-social interest, the "enterprisal" and "collective" *interestedness* attached to the profit had to be established with sufficient power, and in a way that the enforcement

of all-social interests should have priority. In order that the enterprises might in fact reach efficient decisions, adequately extensive *competences* had to be vested in them.

Hence, on the whole, the following picture will present itself:

a) The *external environment* (the controlled, but, of course, never wholly controllable market) provides the stimuli. As far as possible the state will bring about this economic environment, not in a proprietary capacity, but in the course of its economic organizing work comprising the national economy as a whole. The tools are primarily unique large investments by the state, and, secondly, other investments and the various economic regulators decreed by the state, i. e. regulators governing the price, wage, taxation, credit and currency policy. Since these regulators do not affect the problem of state ownership, we shall not discuss them here.

b) The *internal construction* of the enterprise, its economic infrastructure and the enterprisal and collective competencies have to guarantee that the enterprise respond to external stimuli in a lively and correct manner. The enterprise has to make the decisions and both the enterprise and the collective will have to bear consequences intensely. The state *as owner* has to take care of this. Therefore in the following we shall speak of this economic and legal arrangement.

9. The owner is the state, and creates an enterprise in order to couple state-owned means of production with labour. In this connexion the agenda of outstanding importance is this:

a) decision on the foundation, reorganization, or liquidation of an enterprise;

b) placing at disposal the starting capital;

c) definition of the scope of activities of the enterprise;

d) appointment and dismissal of the manager.

These four decisions are the criteria and the necessary minimum of ownership, independent of the social systems.[13] These are the basic functions also when a joint stock company is floated. Ignoring discrepancies in the contents for the present, there remain the differences in the legal structure. The decision of the state as owner assumes forms of administrative law in the majority of cases. In fact, the unity and at the same time the discrepancies, of the sovereign and proprietary character of the state have been explored already by Venediktov.[14] Naturally, a sharp separation of the two characters is out of the question. However, obviously the basic forms of movement of the state on the legal level consist in sovereign and administrative acts. Consequently, as for the *content*, on the whole yet not completely, the proprietary and the sovereign elements are separable, but not on the level of the *legal forms*. The state may continue its proprietary activities by having recourse to the means of *administrative law*, and, for that matter, within a definite scope, it may make use of its proprietorship also for the continuation of administrative activities [15]. This goes to an extent that it will become a matter of decision purely in the field of economic policy whether the state will appropriate what is its due as proprietor, in the form of profits, or as holder of the sovereign power in the form of a profit tax (section 16). In addition, the state has recourse to means of *labour law*: it signs a labour contract with the manager. Furthermore the state makes use of means of *civil law*, e. g. when it remits the starting assets to the account of

the enterprise. By contrast, the decisions of an enterprise-founding capitalist owner cannot assume the form of administrative acts. Here for the foundation of an enterprise the founders resort to means of civil law or commercial law, and do so also in their associated banking operations. Here, too, elements of labour law will emerge.

10. To what extent the owner may thereafter have a say in the operations of the enterprise, will be a matter of deliberations following from the proprietary position, rather than a problem of ownership proper. The extreme independence the owner grants to his enterprise is a phenomenon of modern large-scale industry, basically independent of the antagonistic character of the social systems. The contrast between the socialist state, directing planned economy as owner, and the capitalist owner is not discussed here. The owner entrusts the transaction of business to the manager. He himself will merely keep a check on the extent to which the manager has achieved the targets the owner had set. If the operations of the enterprise are up to the mark, he will express his satisfaction with gestures of contentedness and friendship; if not, he will become unfriendly, e. g. he will terminate employment, reorganize or wind up the enterprise.

In the earlier system of economic management this was the case to a small extent only. A discussion of the details why this was justified in the period following the socialization of the means of production, at a time of a large-scale socialist "accumulation of capital", will be omitted here. Still the fact remains that the situation has changed and – mutatis mutandis – this change is of an order of magnitude equalling that of the transition from the liberal phase to the monopolistic phase in the history of capitalism, even if the change is in the opposite direction. However, it should be remembered that in both capitalism and socialism the change has taken place within the framework of the existing basic structure.

The peculiarly non-proprietary economic structure of a state enterprise as shaped by the economic reform owes its existence to the fact that *the specific objective and subjective circumstances which stood in the way of the enforcement of the general trend outlined above, have ceased to exist.*

11. The structure of the enterprise and, in general, enterprisal operations, rely on the possible *solidity* of this arrangement. This solidity is guaranteed by the starting assets together with the reserve fund to which the procedure of reorganization and liquidation is attached. This is guaranteed also by the relative stability of the economic regulators, a problem which is outside the scope of this study. Finally, it is also guaranteed by the prohibition to reshuffle enterprisal assets. Without a solidity of this sort, enterprisal independence would be rendered practically nonexistent by the fluidity of the assets.

12. Another condition of enterprisal independence is the supply of the enterprise with *current assets* sufficient at least for simple re-production. To this the right of the enterprise to *investments* has to be added, i. e. the legal possibility of a decision to extend re-production. Still here the stringency of financial means required for investments calls for a certain all-social regulation, at least when the investments exceed a certain order of magnitude. This all-social regulation is guaranteed by the circumstance that an enterprise may invest from its own means only to a limited extent. Beyond a certain amount, the enterprise has to apply for bank credits and by having recourse to the

principles of a credit policy, the bank may safeguard all-social interests. However, in order to prevent the enterprise from throwing itself completely on the bank beyond a definite limit, and to keep off the allurement of irresponsible investment, bank credits are granted for investment only when the enterprise at the same time ties down and risks its own means.

13. It is the endeavour of the state to bring about a harmonic equilibrium between the means of production consolidated in its enterprises and the group performing work. The means of production cannot therefore be developed to the prejudice of the collective, nor can the group consume what is needed for the development of production. This is the reason why the state as owner has created the funds of enterprisal interestedness, namely the development and the profit share funds.[16]

The creation of these two funds has called attention to one of the significant traits of the system.

The enterprise, so far mostly considered a framework or an organization, is — for its content — *the unity of property and work, of the means of production and the producing collective.* Although the funds mentioned above are not responsible for this duality in unity, still they give expression to it, moreover provide it with definite outlines and enlarge this relative "other"-ness of property and labour within this inseparable economic unity. Here it will become manifest that "in the present system of economic management the enterprise displays its activities in a dual capacity, viz. as economic venture and as the shop of collective work."[17] The enterprise is the relative duality of an *economic organization* producing for needs and of a producing and consuming *group of men.* Here, so to say, the relative discrepancy between "enterprise" and the collective will manifest itself, and since enterprise and collective have to be supplied from a given, and by no means unlimited, mass of assets, also a relative conflict of interests will emerge[18]. This relative conflict of interests appears with clarity in the dispute whether the fees for innovators should be charged to the development (technical development) fund or to the profit share fund. In this segregation and relative conflict of interests, stress is laid separately on the financial and personal, on the proprietary and working elements of the enterprisal unity, and in this sense the group collective will appear relatively abstracted from the enterprise in the same way as the enterprise has been abstracted relatively from the group collective. However, it should be remembered that the two abstractions are of an extremely relative character. In fact the enterprise is the economically inseparable unity of the means of production and the collective doing the work; within an enterprise, no collective exists without means of production, just as there are no means of production without a collective. What may happen at most is that within an enterprise the "*economic*" aspects will be in the fore in certain respects rather than the "*personal*", and vice versa. The fundamental unity of interests of the two sides is equally clear: the work of the group collective produces the "enterprisal" profit, and with the growth of the "enterprise" the incomes of the members of the collective will also tend to rise. As regards the relative conflict of interests, exactly the factor which lays a stress on, and gives prominence to, the duality of "enterprise" and collective, namely the separation of development and profit share funds, will prevent even the most comprehensive difference of interests from degenerating into an open conflict. The question of the distribution of the

profit left with the enterprise between the "enterprise" and the collective has been settled from the very outset by the provision which fixed the shares to be remitted to the one fund and to the other. And this regulation originates from the only competent agency, namely the *owner*.

IV

The element of management

14. As far as the "economic" or "enterprisal" element is concerned, in this respect we may speak of the *commodity-owner* functions of the state enterprise in the more comprehensive economic, but not in the legal sense[19], however with certain limitations:

a) The function of a "commodity owner" is a partial function only. The statement, or final conclusion, according to which the state enterprise is "the narrower collective of the workers and employees, organized and directed by the state as the wider collective, whose specific function among the state agencies lies in the fact that through it the state appears as a commodity owner"[20] elevates – in this author's opinion – an actually existing element to the rank of a par excellence specific function of the state enterprise. Previously already *Venediktov* saw the essence of the right of operative management in the organization and realization of production, i. e. in administrative, labour and civil law activities, and not exclusively in those of civil law[21]. In our opinion the specific function of a state enterprise among the state agencies is the combination of the means of production in state ownership with the groups performing work, i. e. in production or any other economic activity, and – since commodities are being produced – two of its indispensable partial activities are purchase and sale, both of which take place in a way that the state buys and sells, although the state is not the owner. However, the development and operation of a non-proprietary collective is a function of the state enterprise as well, in the same manner as its "business" activities, the earning and the increase of profits. The capacity of a "commodity owner" has a role only in this latter sphere, but does not exhaust this sphere fully. An enterprise has not only "commodity owner" functions, which it exercises outwards, but also decision-making competences as regards the augmentation of state-owned fixed assets, investment and technical development. Although eventually these functions and decision will similarly be translated into reality through the agency of contracts, i. e. by means of commodity relations, both the competence and the function in its background will go beyond "the sphere of commodity ownership existing to the outside, to third persons and their organizations" i. e. a sphere which exists only in respect of assets entrusted to the management of the enterprise.[22] Here the enterprise amplifies the means of production and the fixed assets in state ownership, and any decision the enterprise may make in this respect will exceed the "commodity owner" functions exercised outwards on the assets "entrusted to its management". The functions of the economic, "business", "enterprisal" structure of a state enterprise cannot be exhausted merely by activities turned *outside*, which are secondary if compared to the decision and activities directed

to simple and expanded re-production; but *one of the partial functions* may be termed as the function of a "commodity owner."

b) Yet this is not an achievement of the reform of economic management. A state enterprise was always, and still is, a Janus-faced institution; in a certain, though changed sense, it is within the organizational scope of the state, and an economic unit at the same time. The enterprise is the subject of relations of both administrative and civil law. Even in the earlier system of economic management, the enterprise exercised the rights of possession, use and disposal, and exercises them even today. It was a juristic person, and it is still one. All this has been discussed extensively in the literature in the period of the earlier system of economic management, and even this author wrote, and was by no means the first to do so, that on the level of inter-enterprisal co-operation "state socialist ownership operates in the form of *commodity ownership*".[23] In this respect the reform has produced quantitative changes only in the process where the extremely detailed plan instructions have been superseded by fewer, comprehensive and obligatory plan figures and thereafter the system of obligatory targets has come to an end. In this process the decision-making authority of the enterprises was moderate at the outset, and expanded gradually later on. When we modestly spoke only of the "commodity form", the law of value acted notwithstanding the preponderance of the elements of distribution and often took vengeance without mercy on those who denied it. The elements of distribution were thrust to the background a long time before the reform, whereas the commodity elements now enjoying a growing legality became "useful citizens". This resulted in a profound change of the ratio of the two Janus faces, and the vertical (administrative) and internal (labour law, internal organizational) relations had undergone a change in the same way as the horizontal (civil law) relations. As a matter of fact the change of the latter had its origins in the change of the vertical relations. The quality of a "commodity owner", as it received permanent emphasis, in a sense that it was the enterprise's due toward the outer world, belonged to this latter sphere. However, here the changes took place within the structures delimited earlier: the traditional rights of ownership, i. e. the rights of possession, use and disposal were exercised not by the state, but by the enterprise, and are exercised even today. In this sense the relation directed to the "outer world" has not changed, still the contrary is implied by the thesis that after the reform through the enterprise the state acts as"commodity owner."

The qualitative changes brought about by the reform have taken place behind this façade of "commodity owner" turned to the "outside". The relations between state and enterprise have changed decisively, and this change had repercussions on the earlier rights of possession, use and disposal (i. e. on the content of the quality of a "commodity owner"). After the reform, the enterprise cannot any more be considered the lowest executive and acting agency of state economic administration. Actually, there is an owner-like relationship between state and enterprise, and as has been said, as far as the legal forms are concerned, there are relations of administrative law in this sphere, or relations of administrative law of the same quality as those of the management of non-state property (official and such of general economic policy). Therefore the second part of the statement quoted earlier and valid also for the conditions of the reform of economic management, i. e. that the state

makes use not only of the traditional proprietary rights, but avails itself of a specific property-administration competence[24], will not hold its own after the economic reform. As has been mentioned, the state decides merely on the existence and the fundamental scope of activities of the enterprise, provides for the subsistence of the enterprise, and attaches the manager by the force of labour law to the enterprise. The control activities of the state are of a mixed proprietary and general economic policy character. In the scope of everyday administration, the state may make use of the remnants of the right of instruction now restricted to an extremely narrow sphere. It is quite natural that this decisive change has repercussions on the content of the "commodity owner" quality to a high degree. Moreover, *Világhy* is right in so far as the decisive change which has taken place in the vertical relation has among others (mainly in addition to the development of a collective interestedness) been directed in the first place exactly to the realization of the "commodity owner" content. However, this does not alter the fact that

aa) the quality of a "commodity owner", i. e. the rights of possession, use and disposal, and, in a varying manner its actual potentiality, existed even earlier;

bb) with the "commodity owner" function the specificity of a state enterprise cannot be exhausted, i. e. neither the "economic" aspect will be exhausted, nor the "personal" aspect covered.

15. The financial stability and independence of a state enterprise supersede the economic structure of independent accounting and the "operative managerial right" relying on the former and manifesting itself on the level of law. This has been stated appropriately by *Világhy* and others. From the economic point of view it is the "assets" rather than "accounting" that should be assigned to the epithet "independent", and legally the stress is on "economic" or "business activity" rather than on "operative management". An essential element of "economic" or "business activity" is the activity of a "commodity owner", i. e. the possession, use of state property and disposal of it. Of this trinity only the last member is of an expressly "commodity owner" nature.

Presumably the majority of opinions agree with the outworn nature of the terms "independent accounting" and "operative managerial rights" in Hungary. Still not everybody agrees that the solution does not affect the basic structure of state ownership. The concept of "*divided ownership*" has turned up in Hungarian[25], Yugoslav, Czechoslovak and Democratic German literature either in general, or in a form where the state is the owner of the enterprise and the enterprise that of the assets in its possession.

In our opinion the concept of "divided ownership" ignores the essence, i. e. that a state enterprise unites the property of the state, in the first place its means of production, with work, with the group doing work. This is by no means some sort of abstract theory. The theory relies on the fact that in all vital questions the state has reserved its authority (section 9). Ownership is vested exclusively in the state. However extensive the rights of the enterprise are, they are not of a proprietary nature. As opposed to the Yugoslav system, in Hungary ownership becomes united with a non-owner collective within the framework of the enterprise (section 6).

16. As regards the *general* concept of divided ownership, here the state figures so to say as "principal owner" of the assets, whereas the enterprise is

some sort of "sub-ownwer". This is valid equally for the starting assets given by the state, and for the portion of the profit earned in the course of enterprisal operations, and remaining with the enterprise. The doctrine of "divided ownership" recalls feudal conditions, still this alone would not defeat the theory. It is *Tőkei* who calls attention to the fact that — even if this may sound paradoxical — from an exploration of the Middle Ages a positive lesson might be drawn for communism.[26] Eventually the doctrine of divided property was modernized by English law, when the institution of the trust was applied to modern conditions to an ever expanding extent merely to circumvent some rigid theses of common law (e. g. to circumvent contract-law prohibitions by the institution of property law of fiduciary and beneficiary ownership), and this institution of trust, as a notion familiar in English legal thinking, is often quoted as an example when it is intended to approximate the relation between the socialist state and its enterprise to a Common Lawyer. Hence the problem cannot be solved merely by presenting the pedigree of "divided property". In fact the problem has to be explored on its merits. The basic objection which may be advanced is that the enterprise couples state property to a producing group. In the general notion of divided property

a) the enterprise is considered some of "sub-proprietor" and by this

b) a position is qualified as quasi proprietorship which Hungarian legal thinking prefers to qualify as a position resulting from the independent partial rights of ownership: i. e. on this understanding enterprisal independence presents resemblance to usufruct;

c) consequently, two types of ownership have been introduced, and by this the notion of ownership has been blurred. We could hardly profit by using the same term to denote two different phenomena. This will hold in particular when it is a question of ownership whose basic and primary character goes back to the roots of the relations between economy and law. It would hardly be justifiable to question the validity of this thesis merely by considering the competence of the enterprise being of a proprietary nature within the framework of divided property. Nor could one argue in favour of the general notion of divided property by emphasizing that the case is one of the two aspects of one and the same phenomenon, and not one of a connotation of two divergent phenomena. Although the two aspects, state and enterprisal, of the same phenomenon exist, only the basic and primary aspect is of a proprietary kind. And this aspect is that of the state, as enterprisal financial independence derives from the state and exists by the authority of the state. Here it may be argued that all rights are derived from the state. Apart from the inaccuracy of a statement like this, there is an essential difference as concernes the problem discussed here, namely whether the rights are derived from the legislative power of the state as holder of sovereignty, or from the proprietary powers of the state as owner. As a matter of fact, enterprisal rights must be derived from the proprietary power of the state, even when the relations of state and enterprise manifest themselves in the form of administrative law and call for special legislation. All this seems to indicate that reality will find a better expression when the economic and legal position of the state is represented by an independent non-proprietary category rather than by giving a relative trait to the notion of property and in particular of ownership.

If the general notion of divided property is pushed through consistently, then it will be found that division is not restricted to the relations of state and enterprise. As has been mentioned, part of the profits remaining at the enterprise will become partially "enterprisal", partially collective-owned (or, simply, allocated to the development and the profit share funds). Thus, within the enterprise, divided property will come into being, i. e. property divided between the "enterprise" and the collective. In this separation the enterprise will either become a blank framework, or the state has to be visualized in the background. The former is absurd, because a blank framework cannot appropriate anything. In the latter instance, on the one part the state appropriates in a way that it is behind the "enterprise"; on the other, that the enterprise pays taxes to the state. I. e. within "sub-ownership", too, partly the "principal owner" will emerge in addition to the employed "sub-owners". These are muddled and puzzling results. They cannot be avoided unless the enterprise is considered homogeneous and the relative segregation of the "enterprisal", "financial" and "business" elements from the working group is ignored. However, this would hardly be correct. *It is the inherent vice of the formula "principal property" of the state – enterprisal "sub-property", and so also of the doctrine of enterprisal "commodity property", that it aligns the state with the enterprise, and not property with work.* It regards the enterprise combining property with work as homogeneous, although it is merely unified, but not homogeneous, viz. the financial and business aspects originating from ownership constitute a unity with the collective element coming forth from work in a relatively segregated manner.

As regards appropriation, in our opinion the peculiar situation will become true where the proprietary appropriator is the "party" which appears to appropriate in the least proprietary manner, i. e. the state, to which its own enterprises pay taxes. However, this is merely a legal form, which is justified by considerations of economic policy outside the scope of state ownership, viz. a policy which makes it clear that regulation, incentive, "dissuasion" may be made more convenient by the assessment of taxes rather than by means of an undifferentiated mass of profits. It would be mere legal formalism to draw the conclusion as if the state were appropriating as the holder of the sovereign power rather than in its capacity of an owner. One of the functions of the sovereign power is to provide for a coverage of the "joint costs" so well known from the criticism of the Gotha programme. Naturally, the taxes assessed on the enterprises eventually serve this end, still the same end would also be served by a direct appropriation of the profits.

In point of fact, the case here is that appropriation is arranged exclusively by the state as owner, which alone decides which part of profits shall belong to itself, which shall be allotted to the development, resp. reserve fund and which to the profit share fund. Thus the power to appropriate is exclusively vested in the state as owner. As to the assets remitted to the enterprisal development fund and to the reserve fund, these are appropriated by the state as owner through the link of the enterprise[27], these assets are "secondary" state property, i. e. they are *state* property and not "sub-property" within the framework of some sort of a divided property. The collective does not appropriate in a capacity of an owner either. The group, also through the will of the proprietor state, appropriates as a non-proprietary working group, and, as will be

made clear subsequently, within the limits of a wage system charcateristic of employment (section 26).

Hence, along the entire line, *the proprietary appropriator is the state*[28], *in the same way as the "enterprisal" and group rights are derived from the proprietary power of the state.*

17. The construction as if the enterprise were in the ownership of the state and the assets in the ownership of the enterprise, sounds somewhat fascinating. Just as in the variant of divided property the feudal analogy loomed up, here the bourgeois analogy appears to be obvious. I. e. the enterprise-founding capitalists create a juristic person and endow it with proprietary capacity. Why could not the socialist state act in the same way ?

Let us discuss the question the other way round. Why does the capitalist act as he does ? In our opinion, where the capitalist acts as he does, i. e. where he does not want to become identified with the enterprise, like in a joint stock company, he does so because he has the liquidity of his property in mind, he wants to segregate the part of his property exposed to business risks completely, and often he wants to remain anonymous. But this is not the aim of the socialist state[29] and if the state as owner is not liable for the debts of the enterprise, at least at home, this is not because the state, in fear of excessive risks, insists on limitations, but merely because this method is compatible with the independence of the enterprise.

And why is it not correct when the socialist state acts in this manner ? Beyond the basic argument quoted before, this is so because a state enterprise is not a bourgeois enterprise, whre the personnel is attached to the enterprise under a commodity contract, i. e. where the labour element is not an integral part of the enterprise. However, in a socialist enterprise the group collective is an integral part of the enterprise, even when a relative separation of the "enterprisal" and personal aspects has been carried through. *Világhy* has remarked appropriately that the personal side of the state enterprise, i. e. the group collective, could hardly become an object of ownership[30].

18. The next question to answer is how the ownership position will change in the event of *partnership*. If partnership takes place without the creation of a juristic person, no special problem will emerge, as the assets remain in the ownership of the partner enterprises. The analysis will be confined to the case when the partnership so created has been endowed with legal personality.

If we wanted to remain true to what has been set forth so far, we should come to conclusions hardly other than those holding for state enterprises. When, in the case of these, the state has proved to be the proprietary appropriator, in the form of its profit share or taxes, or else through the link of the enterprise, then here, too, the situation will be the same, only by one link more. The assets of the company are state property of the third order, i. e. twice-transmitted state property, whereas the competence of the company is one derived secondarily from the proprietary power of the state. This follows from the fact that the state *as owner* authorizes its enterprises to bring about partnerships, after the state has largely waived its right as the owner to organize the concentration or integration of its enterprises.

19. There is an undeniable complexity in this reasoning defeating the concept of divided property, although partnership would not put the partisans of the general variant of divided property in an easy position either. In any case it

is easier to speak only of property in common parlance, in the same way as many telephones are labelled "Post Property". However, although in common parlance nobody would insist on juristic accuracy, common parlance would relieve nobody of the requirement of legal accuracy. We are convinced that it is not the reasoning that is complex; what is complex is the highly developed socialist economy, and if the conclusions are fraught with complexities, it is because reality has made them complex.

V

The labour element

20. In the state enterprise the means of production in state ownership are combined with the groups doing work. Method and nature of this combination are characteristic of the transient phase of a socialist society, i. e. of the "not yet" and "no more" of what we may read in the "Critique of the Gotha Programme". The combination of property and work does *no more* take place through the agency of commodity relations, but there is *not yet* coincidence without some mediation. There is need for some agency, but this has ceased to be of a commodity nature. The man doing the work is no more in a class antagonism to the owners, still in his present capacity he is not yet owner. The members of the working collective are as *citizens*, i. e. under the Constitution, joint owners of that all-social property which in the legal system appears as the property of the state representing society. In this sense, the bourgeois-citoyen separation will for the socialist phase be preserved while abolished. It will be *abolished* while preserved because the bourgeois element has ceased to exist and has, in this context, been replaced by the consumer, the owner of personal property and it will be *preserved* while abolished because the relative separation of the status of a citizen and any other (worker and consumer) status still continues owing to the transient character of the socialist society. But continues in a way that, in the long run,even these remnants of the bourgeois-citoyen duality will be broken up for good. Namely the liquidation of private property has created the fundamental condition for the enterprise as the collective of workers to form a uniform collective. The group emerging in this way is not of the "citoyen" type, because it is not all-social and has no public power; on the other hand this collective does not congregate the workers as consuming private persons through the mediation of personal property, and this is exactly what is left over in the course of the preservation of the bourgeois character while terminating it. In the couse of a dissolution of the citoyen-bourgeois duality society has inserted-between the status of a citizen and a consumer, through the status of a worker, the group collective occupying a position between the social all-collective and the individual, as one of the principal means of this liquidation; and so the citoyen-bourgeois separation has been superseded by the triple unity of citizen-worker-consumer, or of the member of the all-collective, the group member, and the relatively autonomous person. This still existing relative separation is being dissolved by the wellknown thesis of *Lenin*, according to which

even in the sphere of "private law" all is of "public law"[31]. It is also being dissolved by the social services in the sphere of which the consumer is not separated from the citizen, can be dissolved by communist consciousness which regards the elements of citizen, worker and consumer, the rights and obligations, as a unity. Socialism has so to say "encircled" this separation, but at the present stage of production it can be made disappear only in words, if at all.

In this question we therefore disagree with *Weltner* who otherwise has done pioneering work in the scientific construction and development of the law of the enterprisal collective. According to him, the workers take part as joint owners in the enterprisal operations, not as the joint owners of hypothetical enterprisal property, but as the members of the whole of society working in a definite enterprise[32]. However, the members of the enterprisal collective take part in the work of the enterprise as *workers*, and not as citizens. The right to work is due to them in their status as *citizens*[33], but their proprietary relation to the enterprisal assets is the same as to the assets of other enterprises, or as the relations of others to their enterprise. Their financial interest does not follow from their all-social proprietary status, but from their "membership" in the enterprise; and their right of participation also has its origin in this "membership" and not in their all-social proprietary status. This is revealed also by the activities aimed at the safe-guard of the interests of the workers and by the fact that mostly the trade union is in charge of the representation of the workers. This activity and its organization, is typically non-proprietary in its character. The enterprisal collective is not a proprietary collective, it is only a working collective. In a state enterprise state ownership combines with the working collective. The theory of "divided property" ignores this fact from the proprietary aspect, and so does this "partial-proprietary" concept from the aspect of the working collective; it blurs the distinction between the two aspects of property and work, still relatively separated on an enterprisal (and not citizen) level. In this sphere the decisive new trait lies in the fact that in their status as *citizens* the workers are already joint owners, while in their capacity as *workers* they are not yet. This is a question of two different levels. The workers as citizens are entitled to the right to work, they have a share in the socialist democracy as achieved at the given stage of economic development, and of level of consciousness, and within the framework of this democracy, the workers are entitled to make use of the potentialities of democracy also at the place of employment. However, these civic rights prevail in the various manifestations of social life in conformity with the specific regularities of the various partial fields, i. e. within the enterprise as the rights of the nonproprietary working collective, and *not dircetly as a partial proprietary right of the citizen.* It can be explained only in this way why the workers of a given enterprise have more rights in the section of state property that has been turned into the assets of this enterprise, than extra-enterprisal persons, employees, co-operative members, dependants, etc. who equally are subjects of all-social property.

21. In the last analysis, the contradiction of labour law, or its duality, viz. that the workers are attached to the enterprise by a *bi-personal* legal relation of the labour contract, and that, on the other hand, the workers constitute a *collective* as concerns the interest-structure and spheres of authority, follows from the relics of the separation "bourgeois-citoyen". The two-position relation

and the collective relation are in peaceful co-existence as two clearly separated bodies. This separation of the bi-personal legal relation from the collective relation is a phenomenon of the period of transition. Regarded from this angle, the bi-personal legal relation is the bourgeois labour law relation void of class antagonism and commodity relation (although commodity production and other factors have an appreciable influence on this non-commodity type relation), whereas the collective relation is communist labour relation void of the majority of the marks characteristic of a communist society. For that matter this duality is shown also by the principle of the reform of economic management that in matters affecting the collective, action should be taken in agreement with the trade union, and that in matters affecting single persons the one-man leadership of the manager (director) will prevail.[34]

22. *Hence the enterprisal working collective should be considered a non-proprietary group attached to the enterprise by a set of bilateral contracts.* The employees attached to the enterprise by such bi-personal legal relations are turned into a group chiefly by their *joint non-proprietary financial interest.* Here, too, interest will lay claim to rights, namely the group possesses certain non-proprietary rights, and in order that it might exercise these rights as a group the members of the group have *non-proprietary membership rights and obligations.* It is outside the scope of the present paper to point out that in addition to the economic and legal aspect there is also a social-political, educative aspect, in the long run the most important, namely the efforts displayed for the development of a "true community" (Gemeinwesen), whose success largely depends on the totality of the economic and mental evolution.

23. In the term "joint non-proprietary financial interest" the expression "non-proprietary" betrays that here the question is one of employees and not of joint owners, and the expression "joint interest" that the particular members of the group are directly interested in the results of the group as a whole. This system of interest has been completed on an enterprisal level. However, there still remains the effective completion of the internal (factory unit, shop, working site, etc.) system of interest[35], since the more directly group interest is coupled to individual interests, the more efficient is the system. Large-scale enterprises, so frequent under developed industrial conditions, are incomprehensible for the particular worker. It will become an abstract entity, so that further mediators are needed in the course of the conciliation of all-social and individual interests.

24. Obviously group rights are directed outwards. However, these are specific "external" relations, because they do not extend beyond the scope of the enterprise. The "external" relations attach the collective to the "enterprise", i. e. legal relations come into being between the enterprise and its personal side. In reality these legal relations are established *between the proprietary and the personal sides,* on the basis of a community of interest of the two sides, and as determined by the divergence of interests characteristic of them. For that matter, this seems to defeat the ,,part-proprietary" quality of the collective members as workers. This divergence of interests has its origins not in the segregation of the development and profit share funds, still it shows in relief this segregation, so to say personifies this divergence of interests, at the same time when state-proprietary segregation and obligatory distribution reduce the sphere of the clashes of interests by fixing in advance the ratio by which any residual profits should be distributed between the two sides. As a matter of

fact the harmony of interests mentioned above may be explained by the fact that when the enterprisal assets are larger, both sides may have their respective shares increased. On the other hand the divergence, moreover clash of interests, will in this sphere manifest itself in the distribution between the two sides in the first place. This divergence or clash of interests may, however, be mitigated by the state-proprietary distribution already mentioned. Still in the course of the evolution of the reform the clashes of interests may tend to rise, and the development of the system of interestedness may be responsible for trends in the management of the enterprise which may justifiably prompt the collective to take a resolute stand. Hence the *conflict* of property and work will be preserved white abolished in the same way as the method of the combination of property with work (section 20). The element of abolition applies to the conflicts manifesting themselves in class antagonism; the conflict, as the conflict of interests arising on the soil of the identity of all-social and group interests will from the one side appear as the conflict of production and the satisfaction of social needs, from the other as that of the satisfaction of group needs. In the conflict the enterprise will be divided into a proprietary-all-social and a worker-group side. Furthermore the element of "abolition" manifests itself in the circumstance that the legal relations of "enterprise" and group are by far not exclusively conflict relations. On the soil of the harmony of interests these relations are at the same time predominantly those of mutual aid and co-operation. This will become particularly clear in the suggestions of the collective for an improvement or rationalization of production. The criticising activity of the collective might be a manifestation of co-operation as well as of conflict. Although there may be a potential or open conflict in the background of representative activities aimed at the safeguard of labour interests, still the case is rather one of the conciliation of relatively divergent points of view, where the best possible solution will be the one which by inspiring the collective with satisfaction also redounds to the benefit of the "enterprisal" side.

In fact, and in the first place, these intra-enterprisal "external" legal relations of the collective represent the collective's rights in the management of enterprisal affairs, in decision-making. Naturally, in a most favourable case, extensive authority should be assigned to the collective in this sphere. Such a policy would be of utmost importance in an effort to create a "true community" because without a proper sphere of authority, the system of interests can perform the function of incentive only partially, and because for a completion of the group structure a personal participation in management is indispensable. However, a condition of the achievement of this goal is that the collective should be a proprietary collective. Still this is not the only problem, as in fact, in the actual proprietary collectives (in cooperatives), the personal participation of the members in decision-making is not always sufficiently intensive either. The fact that in state enterprises the state-employed manager is the one-man leader in conformity with state ownership, is not the only obstacle on the path to full participation. Reasons lying much deeper are involved here, and also these may be traced back to the transient character of socialist society. For the time being the gap between the stock of knowledge, horizon and range of interest essential for far-reaching decisions and the state of consciousness of important layers of the labour force performing often mechanical, monotonous, physi cally exhausting work is still too great. This leads to the fact that the mem-

bers of the collective can in most cases take the initiative with success only in connexion with decisions affecting their immediate environment. Beyond this, however, the participation of the collective is subject to a dual limitation, viz.:

a) In the matters concerning the whole enterprise, the collective takes part through its *representative*, i. e. the trade union committee, mutatis mutandis, in the same way as the exercise of all-social ownership rights also takes place through a representative, i. e. the state. The trade union committee is the partner of the manager representing the proprietary-all-social side, i. e. the "enterprisal", "business" side. In this respect the optimum to be achieved is that the trade union properly informs the collective, and is at the same time kept adequately advised of the developments at the enterprise. Hence the above mentioned ,,membership'' rights and obligations the working collective come forward mostly within the trade union.

b) The second limitation follows mostly from state ownership. Through the trade union, the collective influences decision-making in *business* matters through its activities aimed at *the safeguard of labour interests* (e. g. action in the event of large-scale dismissals, labour safety competences) rather than taking part in it. This relative segregation of the "business" and "safeguarding" activities also reflects the relative separation of ownership and the group doing the work.

Nevertheless an extremely important activity will be left to the members of the collective, an activity to which a well established system of interests supplies the fuel and which does not insist on an institutionalized, organizational, decision-making and representative system, namely is *criticism*. Hence from "above" the channelling and influencing role of state socialist ownership and the indirect economic regulators of the state wielding the sovereign power put a check on the extreme freedom of enterprisal decision-making and from the "inside", ideas are supplied and limitations are imposed by the criticism of the group collective nurtured by the interest of this collective.[36]

25. When the group has "external" legal relations of its own, then it is a *subject at law*.[37] This quality of being a subject at law is one of *labour law* and not of civil law. This means that the group is "a subject at law of a collective character besides man, the state, and the juristic person".[38] The latter three are of the civil law, the first of the labour law type. This subject at law of a labour law character is segregated from the subjects at law of a civil law character not because it is a collective type, – in fact, a juristic person is also of the collective type, – but, as made clear by *Weltner*, by the fact that the group is an intra-enterprisal subject at law. Its function is to become one of the elements of a group structure, i. e. to personify legally the labour side of the property-work merger, and not to take part in relations of a relatively autonomous structure, like a subject at civil law.

Parallel to what has been set forth above, the enterprise's status of a subject at labour law will also be enriched. In accordance with the contradiction referred to in Section 21, the enterprise is the subject of partly individual, bi-personal labour law relations, partly of legal relations where the other party is the group collective. In both legal relations, the enterprise is a subject at labour law, the embodiment of the proprietary side.

As we have seen, the collective as a subject at labour law is represented mostly by the trade union committee, like the enterprise as the subject at labour law by the manager. Enterprisal management and the trade union are mutually "social partners of equal rank, not in the control of the process of production, but in the representation of the interests of the workers"[39]. In this way, a representative will come into prominence on both sides who is at the same time identical with the side represented by him and also different from it. As will be explained (section 27) the manager is attached to the proprietor state by employment, and to the enterprise by his interests for the most part. The trade union committee represents the group performing work, which, however, is not identical with the primary trade union organization. The members of the work-performing group are not automatically trade union members. They become members only by voluntarily joining the trade union. The primary trade union organization, like the enterprise itself, is not only a subject at labour law, but also a subject at civil law. The same cannot be said of the group collective. Finally, the trade union committee, like the manager, has supra-enterprisal relations outside the group, which attach the committee to central, superior trade union organs.

This peculiar position of the representatives of the two sides, i. e. to some extent their separation from those whom they represent, and their relations to superior organs, clearly demonstrates again that within a state enterprise state ownership is coupled with the group performing the work. Although the existence of relations with superior bodies always implies the risk that matters will be settled not within the enterprise, but above it, i. e. a scope will be opened to bureaucratic methods, still in the present system there is always a chance of reconciling proprietary-business interests and the standpoint of the representation of the working group on the upper and mid-level at the very outset, i. e. of referring certain conflicts, which may defy attempts at a solution within the enterprise, to the superior quarters of the two sides. This may have repercussions also on the contradiction e. g. of the bi-personal employment and the group collective in a way that the contradiction will be mitigated somewhat when statutory provisions and agreements by collective bargaining brought into harmony by the two sides prevent bi-personal labour law relations from being atomized, and shape them so as to conform to the needs of the group.

Hence the collective as a subject at law, and its representation, the element of interest protection first of all, *betrays the existence of a non-proprietary, labour group*, further that the *enterprise* consisting of the same group *is not owner either, and enforces the proprietary elements of the state merely through the agency of its manager having a peculiar position in this co-operation for common interests, yet also fraught with conflicts of interests of which the combination of property and enterprisal work consists.*

26. So far the group has been considered a mostly homogeneous unit. However, within the group there is a division of labour which is relevant for the topic of the present study. As a matter of fact, a distinction has to be made between the members of the group having an influence on the enterprise as a whole, and the others. In fact the interests of the owner are served, or may be brought to naught, by the former to a much greater extent than by the latter. The excellent execution of a wrong enterprisal decision might become responsible for the accumulation of unsaleable stocks. On the other hand, a correct

decision will make realizable the results of the work of the collective to the benefit of the national economy and the enterprise. The Hungarian system of economic management has drawn the necessary conclusions in so far as it has approached the wages and salaries of such collective members to those of the proprietary type interest. Wages and salaries of those coming within this sphere

a) depend to a greater extent on the profits earned than those of other employees; and

b) in the event of a loss a definite portion of such wages and salaries will have to be returned.

Here several elements combine, viz.

a) firstly, that it follows from the principle of the *socialist wage-system* that those of the decision-making group should be paid higher wages and salaries;

b) secondly, that it is a manifestation of *the collective interest of the working group* that the wages of those of the decision-making group depend to a higher extent on the profits than those of the others;

c) thirdly, the fact that those of the decision-making group have to bear the loss to a definite degree, seems to be a *proprietary-entrepreneurial* solution. In a structure where property and work are separated from each other, the work side cannot bear the loss; at most it can run the risk of looking for another job in the event of the bankruptcy of the enterprise. The loss must be charged to the owner, and never to non-proprietary work linked up with him. On the side of work the wages and salaries of individual work performed have to be guaranteed. Hence the method of a partial defrayal of the loss integrates a *proprietary* element within the *wage system* of those concerned. However, by this the state does not make the workers in executive positions joint owners, but as the owner establishes the wage system derived from employment so as to integrate a risk-bearing element with it to a definite extent. The employee will remain employee, still a definite portion of his salary can move not only upwards but also downwards: it is part and parcel of the coverage of the proprietary risk. This position of the persons concerned does not follow from their general capacity of joint owners of all-social property, but may be traced back to the nature of their assignment, to their position occupied in the division of labour within the enterprise. As for its *purpose*, the obligation of a partial restitution of the loss is homogeneous with all that has the character of an incentive in the wage system, i. e. on the level of individuals with efficiency rating and on the level of the collective with the profit share; however, in the service of the end as for its *content* it goes beyond the range of employment and wage systems. In fact, it passes the boundaries of the proprietary-entrepreneurial range to an extent limited in advance. This amounts to a *limited proprietary liability*, however, beyond this rather generalized statement, it differs in every other respect e. g. from the limited liability of the shareholder. The legal environment of the fundamental discrepancies is the fact that *this proprietary limited liability is integrated into the wage system of the employees concerned in the form of a reduction, or restitution, of part of the salary or wage in an obligatory form.* This is a case of an incentive surplus, and not of those concerned being turned into joint owners with the state in a definite proportion.

27. However, among those concerned there is a person endowed with a special legal status, namely the manager, who is an employee of the state, and not of the enterprise. Therefore, legally, he is not member of the enterprisal collective. *Nyers* calls him the delegate of the state, i. e. of the owner: he is the man of the state in the enterprise[41]; as we have seen in the co-operation with the group and in the disputes, he acts for the "enterprisal", i. e. "business" side. In the system of one-man management, it appears as if the owner state had unrestricted command over the enterprise, i. e. in this respect it was in vain to endow the enterprise with a high degree of independence. In fact it is a state employee, the manager who may avail himself of the benefits of this independence without initiating others into decision-making. It appears as if enterprisal independence were but a decentralization of governmental decisions by vesting decision-making in the enterprisal lieutenant of the state.

Still this would be a rather one-sided representation of the facts. Literary history is acquainted with the notion of the "hero of dual allegiance". A person of this type is the manager. Employment ties him to the state, whereas his interest attaches him mostly to the enterprise. In this sense the manager, too, is a member of the enterprisal collective. One may say that the manager while doing work depends on the owner; as the personal owner, however, apart from the possibility of dismissal, he is in a system of interest in conjunction with the working collective. If he wants to satisfy both the state and the collective and to increase his income, then he has to reconcile all-social and group interests. If in a given matter this is not feasible, then he has to find the best possible expedient. Hence this dual allegiance for the reconciliation of the group interests and all-social interests, by connecting the manager to the state under labour law. This solution will stand the test when basically there is in reality a harmony between the group interest and that of national economy, when eventual conflicts can be settled mostly in a satisfactory manner.

This dual allegiance of the manager is strengthened by the fact that, although he is the trustee of the state, the principal, i. e. the employer cannot instruct him to take definite measures. An argumentation that although under administrative law the state cannot issue instructions to the enterprise, still under labour law the state could instruct the manager, would be rather bizarre. The state endows its trustee with complete independence, it reinforces his financial interest in that it helps the enterprise where he is trustee to operate with profits, and, apart from a few flagrant cases, appraises him by the results of his entire work.

It is a modern method of organizing the management of the objects of state ownership, rather than a solution of the problem of "divided property", when the state appoints the manager, and grants him a free scope for operations. In fact the manager is the chief executive of the enterprise in the socialist meaning. It has already been made clear that this is a case of the socialist manifestation of the phenomenon of modern large-scale industry. Under modern economic conditions the management of an enterprise does not only require professional erudition, but also special accomplishments in the field of organization, leadership, information, etc. It is the consequence of this, and also of other factors, that the owner by preserving his power, by changing the means of the exercise of authority, withdraws behind the scenes, and entrusts another person with the management of the enterprise. The owner sets the targets to this person,

defines the system of interest, and gives him freedom of action. The owner will dismiss him if he is disappointed with him.

Hence the manager is a connecting link between the owner state and the working collective. He depends on both, not necessarily in the legal sense, and, influenced by such a doubly motivated structure, exercises the rights originating from enterprisal independence in a system of one-man management.

VI

Conclusions

28. State socialist ownership is a category of ownership from which in the status of a citoyen nobody is barred, still in any other capacity everybody is excluded, this, too, is a manifestation of the often mentioned transient character of a socialist society: the fact of being barred is an indication of the origin of this society, whereas the participation in this ownership points at the goal towards which it is tending.

Consequently, on the citizen side the structure of this ownership is *absolute* in a sense that nobody is outside the walls of this right. In any other respect, ownership is absolute in the conventional meaning. In principle, and in an abstract form, the same may be said of its *negative* character, i. e. on the citizen side this negative character is always absent, because in joint ownership the active protection of ownership at least against the other joint owners is the duty of every owner, whereas in every other respect the negative character will be there. Since, however, in judging the unlawful and imputable attitude of a given person, the citizen, the worker and the private person satistying his needs cannot be kept apart, and because from § 4 of the Civil Code a civil law obligation of activity may be inferred in general in respect of all absolute and relative legal relations, the statement may be made that the negative character of state ownership is at best but a half truth.

29. A further characteristic of state socialist ownership is that this ownership is *not exclusively a civil law institution*. Fundamentally, this is the consequence of the intertwining of the sovereign and proprietary capacity as analyzed by *Venediktov*. This ownership

a) is on an *all-social* level, mostly in the *vertical* sense, an institution of public, administrative and fiscal law;

b) on the level of the *group collective*, in *internal* relations, an institution of labour law;

c) on the level of *autonomous structures*, in *horizontal* relations, an institution of civil law.

30. On an *all-social* level

a) state socialist ownership is first of all the relation of the owner citizens to the state representing them in a proprietary capacity. In the first place this is the peculiarity of state ownership under *public law*.

b) As far *administrative law* is concerned, the greatest significance consists in the creation of state enterprises, in the establishment of the operating conditions and control of the enterprise. This sphere includes not only the formation of the enterprise, its reorganization, termination, the setting

of targets, the floating of the starting capital, rehabilitation and liquidation, but also the prohibition on instructions and on the reshuffle of assets. In the earlier system of economic management this right was called the proprietary managerial right. At that time the designation was appropriate, today it has ceased to be so: the state does not manage its enterprises anymore, as these have been endowed not only with executive, but also with decision-making functions.[42] For want of a more appropriate term this right is called the right of keeping in operation enterprises.

c) Fiscal law in the present acceptation includes the rights granted by the budget, further, in the sphere of taxation, the institution of a profit tax, by which the state collects the profit for the reasons already mentioned.

d) In the employment of the manager *labour law* has a function on an all-social level.

31. The economic activities for which enterprises are created take place in the *group relations*. These include

a) the organizational relations and those of interest on the "*enterprisal*" side and the legal relations associated with them;

b) the same elements on the side of those performing *work*;

c) bi-personal employment.

Of these *b)* and *c)* come within the scope of labour law, whereas the position of *a)* in the legal system is still unsettled. The reasons of this unsettled character may be traced back to the earlier system of economic management, viz. a state enterprise was considered an agency of state economic administration in a sense that, notwithstanding the character of the enterprise of an independent subject at civil law, the shaping of its internal organization appeared to be an activity within the scope of administrative law. This activity was promoted also by the uniformity of the organization decreed from above. However, this situation was ever more obviously in conflict with the civil law character of the enterprise, the evolution of the system of independent accounting and the right of operative management. At the same time there is no doubt that the shaping of the internal enterprisal organization, the definition of the range of interest, the marking out of the internal competences are by no means matters of civil law, i. e. these are not relations of the autonomous structure, and are not even commodity relations. Civil law is interested in these internal relations only in so far as for the external relations the conditions of enterprisal existence have to be present, further the persons qualified for decision-making and for declarations must be known.

As regards the various types of co-operatives, it seems that some sort of a consolidated co-operative law is beginning to take shape[43]. This law would be a branch of owner and, at the same time, working group law and would basically extend to the internal and representative aspects of such relations. On the side of state enterprises only the side doing the work belongs to the sphere of a branch of law, viz. labour law, whereas the expansion of the proprietary side to the inside of the enterprise does not. It is true, though, that the character of a legal branch dealing with the totality of the internal legal relations of a group is much more obvious if in the group the proprietary and working capacities unite, than if the two are only linked up without becoming one. However, within the enterprise, too, there is only a single collective, even if it is a non-proprietary one and the collective which is the carrier of the "enterprisal",

"economic" organization of the enterprise, its system of interests, legal relations, is the same as the subject of the organization, the interest, and the legal relations on the "work-performing" side. Therefore the solution suggests itself *to have the internal relations of the enterprise embraced by a single branch of law,* i. e. that labour law should extend also to the internal relations of the "enterprisal" side. By this the evolution extending the law of bi-personal employment to those of the working group collective would be completed. This would at the same time be also a step forward in the process of dissociation from the bourgeois forms. There labour law is restricted to the side of work, as there is the gap of class antagonism between property and work. As has already been made clear, although so far only class antagonism has been liquidated, the complete union of property and work is still outstanding. But within the enterprise proper only division of labour differentiates, but not class antagonism. In the internal system of enterprisal interest, the community of interests of the proprietary and the working sides is more intense than their conflict of interests. The owner, i. e. the state, in general refrains from interfering with the regulation of internal relations. It is the enterprise, i. e. the collective that, so to say, takes decisions, headed by the manager owing dual allegiance. In such circumstances there is no obstacle whatever that labour law should, after the integration of the collective relations, do the same with the "enterprisal" side of collective activities, and *extend to the entire internal and representative activities of the group.*[44]

By this the legal relations of the working groups having such an outstanding role in the liquidation of the citoyen-bourgeois antithesis, in the reconciliation of individual and social interests, would fill two branches of law, viz. *the relations of the proprietary and working groups would fill co-operative law, and the non-proprietary working group would fill labour law.* This is justified by the peculiarities of the social relations and the legal methods which characterize the working group.[45]

32. The level of the *autonomous structure*, i. e. the *horizontal* relations, are marked commodity production first of all. Purchase of raw material, power, etc., the realization of profits on the market, transport, investment, granting of bank credits, are effected through commodity-type contrats. To these the contracts of partnership must be added where the commodity element may be rather intensive. Still it may occur that only the autonomous structure will preserve their memory. Technical development, which takes place through the mediation of partly commodity, partly non-commodity relations; protection of possession, or, in general, of the traditional partial rights of ownership, possession and the right of disposal, whereas under enterprisal conditions the right of use is a part of "labour law" in the wider meaning, discussed in the previous section, though not yet fully recognized, are in all events part of the *internal* enterprisal relations, and not of the horizontal relations.

33. Hence the state as owner exercises the traditional rights of the owner through either its sovereign and administrative agencies, or its enterprises. As owner, the state makes use of the means of both administrative and labour law. These means appear in a rather intensive form when budgetary agencies and institutions are concerned; on the other hand, in the sphere of administrative law, they are confined to "keeping in operation" in the meaning as before, and, in the sphere of labour law, to the manager and his deputy.

34. *The principal function of a state enterprise is the combination of state socialist property with the non-proprietary working collective, for the satisfaction of solvent needs within the sphere of the scope set by the owner, i.e. the state.*

As regards the enterprise, *it is not owner, still has a high degree of financial independence; it has no ownership, still it possesses the right of independent management.* The indirect economic regulators (and the labour contract of the manager with the state) are called to shape an economic environment where the decisions prompted by enterprisal interests in general also serve the enforcement of all-social interest.

Still to this end *the intensive development of the collective is required in a sence that it becomes the firm link of all-social and individual interests.* The members of this collective are joint owners of the whole of state property as *citizens*; but they are members of the enterprisal collective as *workers*, and their financial interests are rooted in their quality of *personal owners and private consumers.* This inseparable triple quality provides the possibilities for a reconciliation of interests as referred to before, in the same way as it is the basis of the triple structure of the legal relations, viz. of the *all-social, group* and *relatively autonomous* structures.

35. This development of the collective serves also distant ends. The economic and mental evolution reinforced during the successive phases and then transformed, will break up the principal social barrier in the way of the achievement of the "true community", i. e. the segregation of the citizen and the personal owner in the present meaning of the term. Here is the seeming contradiction that the development of the working group collectives is a phenomenon contrary to the future end referred to above, i. e. taking place in the spirit of financial interest, and even in the sphere of the satisfaction of individual needs, the reinforcement of personal property has been made an objective rather than the increase of the ratio of social services. The principal object of the collective is just the development of intensive group interests which would be capable of mediating between the unfolded energy of personal property and the interests of national economy. Here again we have to do with the transient character of socialism, i. e. the future is being built up partly with the tools of the past. The fuel with which at the present stage of development the motor operates with the highest efficiency, i. e. particular financial interest, is beyond doubt not the fuel of communism, and in addition it is imbued with a concomitant risk of contamination threatening with a lasting harm to consciousness. Still the motor driven by this fuel draws towards the complete building up of socialism and the preparation of the transition to communism. The noxious by-effects of the fuel have to be neutralized, and meanwhile the historically new type of fuel, viz. consciousness and the sense of responsibility have to be brought into action more and more.

36. Hence, along the whole line, recourse will be had to the solution by which within the framework of the state enterprise

a) the state ownership of the means of production will be linked up with the

b) working non-proprietary group whose members in their status as citizens (and not of worker or personal proprietary capacity) are in the sense of public law joint owners of state property.

This is the origin of the peculiarity of the state enterprise that here lines may be drawn separating on the one part the "enterprisal", "economic" and "business" elements, which arise from the element of property, and on the other the ,,collective" element, which has its roots in the element of work. The two are linked up by the community of interests relying on the state ownership of the means of production, the system of regulators guaranteeing the harmony of social and enterprisal interests, further on the economic and legal position of the manager.

On the level of law, this combined units would perhaps be expressed best if the internal relations of the enterprise were consolidated in the rules of a single branch of law. This branch of law would be that of the non-proprietary working group and would contain

a) the internal regulation applying to the enterprise as an economic unit;

b) the collective legal relations, including the safeguarding of interests;

c) the bi-personal labour law relations.

What has been set forth in the foregoing suggests that neither the enterprise as an economic unit, nor the working collective can be considered joint owners in the meaning of civil law. The widespread interests and the rights of both have their origin in the ownership of the state, and not directly in their own (joint) ownership, i. e. the enterprise as secondary association having legal personality husbands with tertiary state property. This is what under actual circumstances enterprisal financial independence, and the legal construction of the right of independent management, further the quality of the collective of a subject at labour law, express.

NOTES

[1] Marx, The Capital (Soviet edition of the Works of Marx and Engels), Moscow, Vol. II pp. 34.

[2] Marx, The Capital (Soviet edition) Vol. III, 1962, p. 772.

[3] Similarly, Weltner, A szocialista gazdálkodó szervezet struktúrája (Structure of the Socialist Economic Organization), 14 Proceedings of Department II. of the Hungarian Academy of Sciences (1965) 3. 221.

[4] Marx, The Capital III, loc. cit.

[5] Marx – Engels Werke, Dietz Verlag Vol. 1 p. 241.

[6] Ibid, p. 407.

[7] For its analysis see Tőkei, Antikvitás és feudalizmus (Antiquity and Feudalism), Budapest, 1969, pp. 171 – 191, in particular pp. 181 – 182.

[8] Nyers, 23 Társadalmi Szemle, (1968) 3. 11, Eörsi, A gazdaságirányítás új rendszerére áttérés jogáról (On the Law of the Transition to the New System of Economic Management), Budapest, 1968, section 99.

[9] For raising the idea before the reform of the system of economic management, see Eörsi, Tulajdonosok és kollektívák jogágazatai: differenciálódás és integrálódás a szocialista jogrendszerben (Branches of Law of Owners and Collectives: Differentiation and Integration in the Socialist System of Law), 13 Proceedings of Department II of the Hungarian Academy of Sciences, (1963) Nos. 1 – 2, in particular pp. 75 – 76.

[10] See Weltner, op. cit., pp. 233 – 234, 237, Seres, A mezőgazdasági termelőszövetkezeti tulajdonjog (Ownership of Agricultural Co-operatives), Budapest, 1968, p. 13.

[11] Venediktov, Gosudarstvennaya sotsialistitcheskaya sobstvennost', Moscow, 1948, p. 593.

[12] Similarly, Weltner, op. cit. p. 223, on the contrary Világhy, Az állam és vállalata (The State and its Enterprise), Jogtudományi Közlöny 1967, Nos. 10 – 11, p. 581.

[13] For the problem of an association of enterprises, see section 18.

[14] Venediktov, op. cit., p. 331, and Eörsi, A tervszerződések, (The Plan Contracts), 1957, pp. 105 to 107; Szocialista polgári jogunk továbbfejlődésének egyes problémái (Some Problems of the Evolution of Socialist Civil Law), Jogtudományi Közlöny, 1959, No. 5, p. 201; Világhy, A tulajdonjog formái és a szocialista jogrendszer tagozódása (The Forms of Ownership and the Structure of the Socialist Legal System), Jogtudományi Közlöny, 1959, No. 5, p. 208.

[15] Eörsi, A tervszerződések (The Plan Contracts), 1957, pp. 104 – 107.

[16] All other funds have been disregarded here.

[17] Nyers, Huszonöt kérdés és válasz gazdaságpolitikai kérdésekről (Twenty Five Questions and Replies to Problems of Economic Policy), Budapest, 1969, p. 47.

[18] For this possible clash of interests, see Weltner, A gazdaságirányítási reform hatásának egyes megnyilvánulásai a munkaszervezet területén (Some of the Manifestations of the Effect of the Reform of Economic Management in the Sphere of the Organization of Work), 2 Proceedings of Department IX of the Hungarian Academy of Sciences, 1968, pp. 208, 209.

[19] Világhy, Az állam és vállalata (The State and its Enterprise), Jogtudományi Közlöny, 1967, Nos. 10 – 11, pp. 573 – 581, further, in a concise form, Gazdasági reform és polgári jog (Economic Reform and Civil Law), Acta of the Faculty of Political Sciences and Law of the University of Budapest, 1968, Part II, pp. 51 – 56.

[20] Világhy, op. cit. Jogtudományi Közlöny, p. 581, Acta, p. 53.

[21] Venediktov, op. cit., in particular sections 42, 44.

[22] Világhy, op. cit. p. 576; similarly the proposed draft legislation, on p. 579, Acta, p. 56.

[23] Eörsi, Szocialista polgári jogunk, stb. (Some Problems etc. . . .), loc. cit. p. 202, further pp. 200, 201, further Venediktov, op. cit. sections 42, 44, 83.

[24] Eörsi, The Plan Contracts, 1957, §7; Some Problems . . ., loc. cit. p. 201, in a somewhat different sense, Világhy, The Forms of Ownership . . . loc. cit. p. 208. For that matter this is not the same as the proprietary right of administration of Seres, which refers to the internal administration of the producing units and not to external proprietary administration, see Seres, op. cit. pp. 286 et seq.

[25] Sárándi, Az új gazdasági mechanizmus néhány jogi problémája (Some Legal Problems of the New Economic Mechanism), TIT Jogi Kiskönyvtára, Budapest, 1967, pp. 4 – 9.

[26] Tőkei, op. cit., Budapest, 1969, p. 213; for a further contribution see p. 254.

[27] Similarly, Mezneries, Pénzügyi jog a szocialista gazdálkodás új rendszerében (Fiscal Law in the New System of Socialist Economy), Budapest, 1969, p. 145. For the element of mediation see Világhy, op. cit., pp. 575 et seq.

[28] So also Nyers, op. cit., p. 42.

[29] In another somewhat long-winded formulation Eörsi, A gazdaságirányítás új rendszerére való áttérés jogáról (On the Law of Transtition to the New System of Economic Management) Budapest, 1968, pp. 187 – 192.

[30] Világhy, op. cit. p. 576.

[31] Lenin, Works (Hungarian edition) Vol. 36, 1958, p. 574.

[32] Weltner, op. cit., pp. 226 – 227; Eörsi, The Plan Contracts, 1957, p. 106.

[33] Essentially in this sense, Seres, op. cit. p. 24, still in the same sense also Weltner speaks of the problem, op. cit., p. 225.

[34] Nyers, op. cit.

[35] Nyers, op. cit., pp. 42 – 47.

[36] In our opinion, Weltner has somewhat overestimated the collective's right of decision-making in 1965, although he, too, mentions that the independence of the collective is narrowest in this sphere (op. cit., p. 239). However, his appraisal of 1965 will not stand the test even when projected to actual conditions

[37] In more detail, Weltner, A szocialista munkajogviszony és az üzemi demokrácia (Socialist Labour Law Relations and Works Democracy), Budapest, 1962, pp. 379 – 384.

[38] Weltner, op. cit., p. 383.

[39] Nyers, op. cit., p. 51.

[49] As regards this question, see Nyers, op. cit. pp. 83 – 85; in connexion with the financial liability of the chief executive, see Eörsi, A gazdaságirányítás reformjával kapcsolatos felelősségi kérdések (Questions of Liability in Connextion with the Reform of Economic Management) in the volume edited by Szilbereky, Jogi kérdések az új gazdaságirányítás körében (Legal Problems in the Scope of the New System of Economic Management) pp. 5 – 53, further On the Law of the Transition . . ., Budapest, 1968, p. 88.

[41] Nyers, op. cit., p. 42

[42] Nyers, op. cit., p. 41.

[43] Nagy, L. (Gödöllő), Az új gazdasági mechanizmus és a szövetkezeti jog továbbfejlődésének elvi, kodifikációs és gyakorlati kérdései (The New Economic Mechanism and the Problems of Principle, Codification and Practice of the Further Evolution of Co-operative Law) Magyar Jog, 1969, Nos. 6–7, pp. 391–403.

[44] Weltner, op. cit. p. 392 et seq. expresses a similar position.

[45] For details see Eörsi, Branches of Law of Owners ... etc., loc. cit. pp. 102–112. It should be noted that there still remain problems in the position here outlined (e. g. at budgetary agencies the administrative and labour law elements have to be kept apart; the place of social insurance relations is still a problem; also the need for the change of the term "Labour law" may emerge, etc.); here, however, these details cannot be discussed.

ZUSAMMENFASSUNG

Im Rahmen des staatlichen Unternehmens werden

a) das Eigentumsrecht des Staates über die Produktionsmittel und

b) eine arbeitausführende Nichteigentümergruppe miteinander verbunden, deren Mitglieder in ihrer Eigenschaft als Staatsbürger (nicht aber als Werktätige oder als persönliche Eigentümer) in staatsrechtlichem Sinn Teilinhaber des staatlichen Eigentumsrechtes sind.

Daraus folgt jene Besonderheit des staatlichen Unternehmens, wonach die aus dem Element des Eigentums stammenden „Unternehmen-" „Wirtschafts-" „Geschäftselemente" und das aus dem Arbeitselement stammende „Kollektiv"-Element zu unterscheiden sind. Die beiden sind durch die auf dem Staatseigentum der Produktionsmittel beruhende Interessengemeinschaft, durch das System der ökonomischen Hebel zur Sicherung der Übereinstimmung der gesellschaftlichen und Unternehmensinteressen, sowie durch die „zweifach gebundene" wirtschaftliche und rechtliche Stellung des Direktors verbunden.

Diese zusammengesetzte Einheit könnte auf dem Gebiet des Rechtes am besten dadurch ausgedrückt werden, wenn sämtliche innere Verhältnisse des Unternehmens durch die Regeln eines einzigen Rechtszweiges zusammengefasst wären. Dieser Rechtszweig wäre der *Rechtszweig der arbeitenden Nichteigentümergruppe* und enthielte

a) die innere Regelung bezüglich des Unternehmens als einer wirtschaftlichen Einheit,

b) die kollektiven Rechtsverhältnisse, den Interessenschutz inbegriffen,

c) die Arbeitsrechtsverhältnisse zwischen zwei Personen.

Aus dem Gesagten geht zugleich hervor, dass weder das Unternehmen als wirtschaftliche Einheit, noch das arbeitende Kollektiv in zivilrechtlichem Sinn nicht einmal als Teileigentümer zu betrachten sind. Ihre ausgedehnte Interessiertheit und ihre Rechte entspringen nicht unmittelbar ihrem eigenen (Teil-) Eigentumsrecht, sondern sind aus dem Eigentumsrecht des Staates abgeleitet: das Unternehmen wirtschaftet mit einem sekundären, die Vereinigung mit Rechtspersönlichkeit mit einem tertiären *Staats*eigentum. Das ist unter unseren derzeitigen Verhältnissen durch die wirtschaftliche Konstruktion der Selbständigkeit des Unternehmensvermögens und durch die juristische Konstruktion des selbständigen Wirtschaftungsrechtes, sowie durch die Rechtspersönlichkeit des Kollektivs ausgedrückt.

РЕЗЮМЕ

В рамках государственного предприятия сочетаются:

а) право государственной собственности на средства производства и

б) не собственническая группа, которая исполняет работу и члены которых являются в качестве граждан (то есть ни как трудящиеся или личные собственники) частными собственниками права гражданской собственности в смысле гражданского права.

Из этого вытекает характерность государственного предприятия, что в нём различаются элементы „предприятия", „хозяйства", „торговли", происходящие из элемента собственности и элемент „коллектива", корень которого находится в элементе труда. Оба элемента сочетаются общностью интересов, основывающейся на государственной собственности средств производства, системой экономических регуляторов, направляющейся на обеспечение согласовать интересы общества и предприятия, равно как и экономическим и правовым статусом „двойной связанности" директора.

На уровне права это сложное единство нашло бы выражение в том, если бы все внутренние отношения предприятия были охвачены правилами одинаковой отрасли права. Эта отрасль права была бы *отраслью права трудящейся группы, не являющейся собственником* и она содержала бы

а) внутреннее урегулирование, касающееся предприятия как экономического единства,

б) коллективные правовые отношения, включая защиту интересов,

в) двухличные отношения трудового права.

Из вышесказанных исходит и то, что ни предприятие, как экономическое единство, ни коллектив трудящихся не может быть рассмотрено частным собственником в смысле гражданского права. Их распространённые заинтересованность и права не вытекают непосредственно из их (частного) права собственности, а из права государственной собственности: предприятие хозяйствует вторичной государственной собственностью, пока объединение, имеющее юридическое лицо, хозяйствует третичной государственной собственностью. Это выражается в актуальных условиях экономической конструкцией имущественной самостоятельности предприятия и юридической конструкцией самосоятельного хозяйственного парава.